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SENATE

{ REPORT
106-31

KAKE TRIBAL CORPORATION PUBLIC INTEREST LAND EXCHANGE ACT

MARCH 22, 1999.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 430]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 430) to amend the Alaska Native Claims Settlement Act, to provide for a land exchange between the Secretary of Agriculture and the Kake Tribal Corporation, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 1, line 5, strike “Public Interest”.
2. On page 2, lines 10 and 11, strike “: Lands exchanged pursuant to this section shall be on the basis of equal value.” and insert in lieu thereof “. The values of the lands and interests therein exchanged pursuant to this section shall be equal.”.

PURPOSE OF THE MEASURE

The purpose of S. 430, as ordered reported, is to direct the Secretary of Agriculture to enter into an equal value exchange of lands and interests therein, in the Tongass National Forest with the Kake Tribal Corporation and Sealaska Corporation.

BACKGROUND AND NEED

The Alaska Native Claims Settlement Act (ANCSA) authorized the transfer of 23,040 acres of land from the U.S. Government to the Kake Tribal Corporation.

ANCSA required all village corporations to select all public land in the core township area. This core township area included the

present day municipal watershed. The Kake Tribal Corporation did not know that it would not be able to make economic use of the watershed in the future. During the 70's it was commonly assumed that logging in these watersheds would not be a problem because the Forest Service allowed it at the time. Only after the Kake Tribal Corporation made its selections under ANCSA did the problems caused by excessive logging in municipal watersheds and near anadromous fish streams become better understood.

In the 1980's, Congress took measures to protect drinking water sources by amending legislation, including the Safe Drinking Water Act, which contains provisions such as the Sole Aquifer Program and the Wellhead Protection Program, to protect public water supplies. These protective measures were implemented long after the Kake Tribal Corporation had selected lands in the municipal watershed area. Therefore, to provide the Kake Tribal Corporation the opportunity to maximize the benefits from its ANCSA land selections and to protect the community watershed something needed to be done.

To resolve this problem, S. 430 would require the Kake Tribal Corporation to convey ownership of approximately 2,427 acres of land used for the municipal watershed to the U.S. Forest Service. In exchange, the Kake Tribal Corporation will be allowed to select other lands in the Saginaw and Hamilton Bay areas. This legislation requires this exchange of lands, and interests therein, to be of equal value. The legislation also directs the Secretary of Agriculture to enter into a Memorandum of Agreement with the city of Kake for the management of the watershed. Lastly, the legislation requires that any timber harvested from land acquired by the Kake Tribal Corporation not be available for export.

LEGISLATIVE HISTORY

S. 430 was introduced by Senator Murkowski on February 22, 1999. On March 4, 1999, S. 430 was ordered, as amended, favorably reported. Except for minor technical changes made in S. 430, an identical bill was considered by the Full Committee during the 105th Congress. The Full Committee held a hearing on September 17, 1997; and the bill was favorably reported as amended on September 24, 1997. Senator Murkowski offered a floor amendment in the nature of a substitute and the bill passed the Senate, as amended, on June 25, 1998. No further action was taken in the House.

COMMITTEE RECOMMENDATIONS

The Committee on Energy and Natural Resources, in open business session on March 4, 1999, by a unanimous voice vote of a quorum present, recommends that the Senate pass S.430, if amended as described herein.

COMMITTEE AMENDMENTS

During consideration of S.430, the Committee adopted minor technical changes.

SECTION-BY-SECTION ANALYSIS

Section 1 states that the Short Title is the “Kake Tribal Corporation Land Exchange Act”.

Section 2(a) directs the Secretary of Agriculture to convey to the Kake Tribal Corporation the surface estate and to Sealaska Corporation the subsurface estate to certain lands as described in subsection (c). This subsection also requires that the values of the exchanges be equal.

Subsection (b) contains a legal description of lands to be conveyed by the Kake Tribal Corporation and Sealaska Corporation to the Secretary along with a reference to maps showing the municipal watershed.

Subsection (c) directs that, within 90 days after receipt by the United States of the conveyances owned by the Kake Tribal Corporation and Sealaska Corporation, the Kake Tribal Corporation shall be entitled to identify lands in the Saginaw Bay and Hamilton Bay areas in writing to the Secretary.

Subsection (d) requires that, within 90 days after the list of identified lands is submitted by the Kake Tribal Corporation, the conveyance of lands by the Secretary shall occur.

Subsection (e) requires the Secretary to enter into a Memorandum of Agreement with the city of Kake, Alaska, to provide for management of the municipal watershed.

Subsection (f) requires that any timber harvested from the lands conveyed to the Kake Tribal Corporation under this subsection not be available for the purpose of exporting that timber from the State of Alaska. This subsection also prohibits any party to which the Kake Tribal Corporation may sell, trade, exchange, substitute, or convey any of the timber from the lands it receives under this section from using the timber for the purpose of export.

Subsection (g) requires the land conveyed to the Kake Tribal Corporation and Sealaska Corporation, to be, for all purposes, considered land conveyed under ANCSA.

Subsection (h) directs the maps referred to in this section to be maintained on file in the Office of the Chief, Forest Service, and in the Office of the Secretary of the Interior, Washington, DC. Should a discrepancy arise between cited acreage and lands on the maps this section dictates that the maps control.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of the measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 11, 1999.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 430, the Kake Tribal Corporation Public Interest Land Exchange Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria Heid Hall.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 430—Kake Tribal Corporation Public Interest Land Exchange Act

CBO estimates that enacting this bill would not have a significant impact on the federal budget. Because the bill could affect offsetting receipts (a credit against direct spending), pay-as-you-go procedures would apply, but we estimate that any increase in direct spending would total less than \$500,000 a year. S. 430 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no significant costs on the budgets of state, local, or tribal governments.

S. 430 would direct the Secretary of Agriculture to convey to the Kake Tribal Corporation and Sealaska Corporation the surface and subsurface estate of lands in the Hamilton Bay and Saginaw Bay areas within the Tongass National Forest. The lands to be conveyed would be selected by the two corporations from federal lands depicted on the maps identified in the bill and dated September 1, 1997. In exchange, the Kake Tribal Corporation and Sealaska Corporation would convey to the United States surface and subsurface estate comprising about 2,400 acres of municipal watershed land. The bill would direct the Secretary of Agriculture to enter into a Memorandum of Agreement with the city of Kake, Alaska, to provide for management of the municipal watershed.

S. 430 does not specify the federal land to be conveyed to the Kake Tribal Corporation, but it provides that the exchange be on the basis of equal value. Because the federal budget is on a cash basis, the budgetary impact of the land exchange is measured by its effect on the government's cash flow, such as changes in offsetting receipts from timber harvests. The land exchanges could decrease offsetting receipts to the federal government because, according to the Forest Service, the federal land to be conveyed to the corporation would likely include areas with merchantable timber, whereas some of the land to be acquired from the corporation has been harvested and would thus be unavailable for further harvest for at least several more years. Furthermore, the Forest Service would consider the acquired area unsuitable for future harvesting because it lies within the municipal watershed for the city of Kake. CBO estimates that any net increase in direct spending from forgoing timber receipts would total less than \$500,000 a year over the 2000–2009 period.

Based on information from the Forest Service, CBO estimates that the agency could incur additional administrative costs to manage the municipal watershed, such as upgrading some roads, obliterating and revegetating other roads, and surveying the area. However, we estimate that such costs would total less than \$500,000 a year, subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Victoria Heid Hall. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 430. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 430, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of Agriculture setting forth Executive agency recommendation relating to S. 430 are set forth below:

U.S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, March 4, 1999.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR FRANK: I write to express the Administration's strong opposition to S. 426, the Huna Totem Corporation Land Exchange Act, and S. 430, the Kake Tribal Corporation Land Exchange Act, which are scheduled for consideration by the Committee on Energy and Natural Resources today. The bills would direct the Secretary of Agriculture to enter into land exchanges with Huna Totem Corporation and Kake Tribal Corporation, which own surface estates, and Sealaska, which owns subsurface estates in southeast Alaska.

The Administration strongly opposed these two bills (S. 1158 and S. 1159) during the 105th Congress. Because both bills would set unacceptable precedents by reopening native entitlements under the Alaska Native Claims Settlement Act (ANCSA), the Secretary of the Interior and I would recommend that the President veto the bill.

ANCSA granted more than 200 village corporations the right to select public lands in Alaska for a variety of uses. Each corporation was required to select the public lands within the township in which it was located. ANCSA was a final settlement and, as such, represented many trade-offs and compromise by all parties.

If either S. 426 or S. 430 were enacted, all of Alaska's village corporations could argue that they too were entitled to exchange land selected under ANCSA for more desirable land. This precedent would threaten to unravel ANCSA's historic settlement through piece-meal amendments. In turn, Federal land management throughout Alaska would be severely disrupted with significant costs and consequences for all taxpayers.

Beyond the question of precedent, the land exchanges proposed by these two bills would not be in the public interest. The primary reason the U.S. Forest Service pursues land exchanges is to provide more efficient land management through consolidation of existing Federal ownership and to dispose of isolated parcels that are uneconomical to manage, S. 426 and S. 430 are in direct conflict with these goals.

Both bills are based on the premise that because some of the land the Kake Tribal Corporation and Huna Totem Corporation received within their townships under ANCSA is municipal watershed land not subject to development, the United States should provide the corporations with replacement land elsewhere. ANCSA, however, contemplated that villages would obtain all land within their "core" townships regardless of its development potential.

The Federal Government should not administer municipal watershed lands in Alaska, as would be required by S. 430. Rather, such lands should be managed by those communities which derive benefit from the land. Federal ownership of municipal watersheds is inconsistent with the ownership patterns envisioned by ANCSA, whereby native corporations had to select lands within their core townships.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DAN GLICKMAN, *Secretary*.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 430, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971 (43 U.S.C. 1601, et seq., as amended)

SEC. __. KAKE TRIBAL CORPORATION LAND EXCHANGE.

(a) *GENERAL.*—*In exchange for lands and interests therein described in subsection (b), the Secretary of Agriculture shall, subject to valid existing rights, convey to the Kake Tribal Corporation the surface estate and to Sealaska Corporation the subsurface estate of the Federal land identified by Kake Tribal Corporation pursuant to subsection (c). The value of the lands and interests therein exchanged to this section shall be equal.*

(b) *The surface estate to be conveyed by Kake Tribal Corporation and the subsurface estate to be conveyed by Sealaska Corporation to the Secretary of Agriculture are the municipal watershed lands as shown on the map dated September 1, 1997, and labeled Attachment A, and are further described as follows:*

Municipal Watershed, Copper River Meridian, T56S, R72E

| Section | Approximate acres |
|-------------------------|-------------------|
| 13 | 82 |
| 23 | 118 |
| 24 | 635 |
| 25 | 640 |
| 26 | 346 |
| 34 | 9 |
| 35 | 349 |
| 36 | 248 |
| Approximate total | 2,427 |

(c) *Within ninety (90) days of the receipt by the United States of the conveyances of the surface estate and the subsurface estate described in subsection (b), Kake Tribal Corporation shall be entitled to identify lands in the Hamilton Bay and Saginaw Bay areas, as depicted on the maps dated September 1, 1997, and labeled Attachments B and C. Kake Tribal Corporation shall notify the Secretary of Agriculture in writing which lands Kake Tribal Corporation has identified.*

(d) *TIMING OF CONVEYANCE AND VALUATION.—The conveyance mandated by subsection (a) by the Secretary of Agriculture shall occur within ninety (90) days after the list of identified lands is submitted by Kake Tribal Corporation pursuant to subsection (c).*

(e) *MANAGEMENT OF WATERSHED.—The Secretary of Agriculture shall enter into a Memorandum of Agreement with the City of Kake, Alaska, to provide for management of the municipal watershed.*

(f) *TIMBER MANUFACTURING; EXPORT RESTRICTION.—Notwithstanding any other provision of law, timber harvested from land conveyed to Kake Tribal Corporation under this section shall not be exported as unprocessed logs from Alaska, nor may Kake Tribal Corporation sell, trade, exchange, substitute, or otherwise convey that timber to any person for the purpose of exporting that timber from the State of Alaska.*

(g) *RELATION TO OTHER REQUIREMENTS.—The land conveyed to Kake Tribal Corporation and Sealaska Corporation under this section shall be considered, for all purposes, land conveyed under the Alaska Native Claims Settlement Act.*

(h) *MAPS.—The maps referred to in this section shall be maintained on file in the Office of the Chief, United States Forest Service, and in the Office of the Secretary of the Interior, Washington, D.C. The acreage cited in this section is approximate, and if there is any discrepancy between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land.*